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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 CHAD H. HAMBY, et al.,

13 Plaintiff,

14 v.

14 POWER TOYOTA IRVINE, et al.,

15 Defendant.

Case No. 11cv544-BTM (BGS)

ORDER RE HEARING DATES

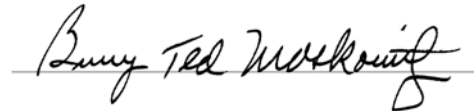
16 Three motions in this case are outstanding. Plaintiff has filed a motion to remand
17 [dock. # 7], Defendant has filed a motion to compel arbitration [dock. # 8], and Plaintiff has
18 filed an ex parte application seeking discovery regarding unconscionability of the contract's
19 arbitration clause and a stay on the motion to compel arbitration hearing to accommodate
20 this discovery [dock. # 9]. The motion for remand and motion to compel arbitration are
21 scheduled to be heard on June 10, 2011, and the ex parte application is fully briefed.

22 The Court has jurisdiction over a motion to compel arbitration only "if the federal court
23 would have jurisdiction over the underlying substantive dispute." *Geographic Expeditions,*
24 *Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010) (citing *Vaden v. Discover Bank*,
25 129 S. Ct. 1262, 1270-1271 (2009)). Thus, Plaintiff's motion to remand presents a threshold
26 issue of subject matter jurisdiction that must be decided prior to the other outstanding
27 motions. Accordingly, the Court the hearing date for the motion to compel arbitration is
28 continued to July 22, 2011 at 11:00 a.m., and the hearing date on Plaintiff's ex parte

1 application is continued to June 17, 2011, so that the Court may first decide the motion to
2 remand.

3 **IT IS SO ORDERED.**

4 DATED: May 16, 2011

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7 Honorable Barry Ted Moskowitz
8 United States District Judge
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